

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CAROL CHESEMORE, DANIEL)
DONKLE, THOMAS GIECK, MARTIN)
ROBBINS, and NANETTE STOFLET, on)
behalf of themselves, individually, and on)
behalf of all others similarly situated,)

Plaintiffs,)

vs.)

ALLIANCE HOLDINGS, INC., DAVID B.)
FENKELL, PAMELA KLUTE, JAMES)
MASTRANGELO, STEPHEN W. PAGELOW,)
JEFFREY A. SEEFELDT, TRACHTE)
BUILDING SYSTEMS, INC. EMPLOYEE)
STOCK OWNERSHIP PLAN, ALLIANCE)
HOLDINGS, INC. EMPLOYEE STOCK)
OPTION PLAN, A.H.I., INC., ALPHA)
INVESTMENT GROUP, LLC, JOHN MICHAEL)
MAIER, AH TRANSITION CORPORATION,)
and KAREN FENKELL,)

Defendants.)

CASE NO.: 3:09-cv-000413

Judge William M. Conley

AMENDED NOTICE OF APPEAL

AMENDED NOTICE OF APPEAL

Notice is hereby given that Defendant-Appellant, David B. Fenkell in the above-named case, hereby amends his Notice of Appeal to the United States Court of Appeals for the Seventh Circuit filed on October 3, 2014, Document 988, as follows and thereby appeals to the United States Court of Appeals for the Seventh Circuit from the following:

(1) an Opinion and Order signed by District Judge William M. Conley on the 4th day of September, 2014, and entered in this action on the 5th day of September 2014, Document 985, granting a motion for payment of incentive awards to the class representatives, a motion for attorneys' fees (class counsel's motion for an award of attorney's fees and reimbursement of expenses), a motion for attorneys' fees (Plaintiffs' motion for an award of attorneys' fees and

costs pursuant to Employee Retirement Income Security Act of 1974, as amended (“ERISA”), §502(g)(1) against Defendant David B. Fenkell), and a motion for final approval of a settlement agreement by Plaintiffs Carol Chesemore, Daniel Donkel, Thomas Gieck, Martin Robbins, and Nannette Stoflet; provided, however, that nothing in this Amended Notice of Appeal relates to (i) claims against Defendant Karen G. Fenkell, (ii) claims regarding Defendant David B. Fenkell’s receipt of Trachte phantom stock plan proceeds; (iii) the Settlements and related Settlement Agreement entered into by David B. Fenkell and Karen G. Fenkell (the “Fenkell’s”) with the Plaintiffs, Trachte Building Systems, Inc. (“Trachte”) and the Trachte Building Systems, Inc. Employee Stock Ownership Plan and Trust (the “Trachte ESOP”); (iv) the Settlements and related Settlement Agreement entered into by the Plaintiffs with the Trachte ESOP Trustees (James Matrangelo, Jeffrey Seefeldt and Pam Klute) and Stephen Pagelow except with respect to those provisions related to the assignment of certain claims by the Trachte ESOP Trustees to Plaintiffs that were extinguished by virtue of the Trachte Settlement; (v) the Settlements and related Settlement Agreements entered into by the Plaintiffs with the “Alpha defendants” (Alpha Investment Consulting Group, LLC and John Michael Maier); (vi) payment of incentive awards to the class representatives, (vii) the Plan of Allocation approved by this Court, or (viii) attorneys’ fees and expenses to be paid out of any settlement funds referenced in the Opinion and Order on the 4th day of September, 2014, and entered in this action on the 5th day of September 2014, Document 985;

(2) a Final Judgment in a Civil Case signed by District Judge William M. Conley and entered in this action on the 8th day of September 2014, Document 986, in favor of Carol Chesemore, Daniel Donkel, Martin Robbins, Nannette Stoflet, and Thomas Gieck against David

B. Fenkell in the total amount of \$1,854,008.50 and in favor of the Alliance Holdings, Inc. Employee Stock Ownership Plan and Trust in the amount of \$2,044,014.42, respectively;

(3) an Opinion and Order signed by District Judge William M. Conley on the 17th day of February 2011, and entered in this action on the 17th day of February 2011, Document 172, among other things, granting in part and denying in part Defendant David B. Fenkell's Motion to Dismiss Plaintiffs' Amended Class Action Complaint;

(4) an Order signed by District Judge William M. Conley on the 28th day of March 2012, and entered in this action on the 28th day of March 2012, Document 677, among other things, granting in part and denying in part Defendant David B. Fenkell's Motion for Summary Judgment;

(5) an Opinion and Order signed by District Judge William M. Conley on the 4th day of June 2013, and entered in this action on the 4th day of June 2013, Document 790, among other things, ruling on remedies; provided, however, that nothing in this Amended Notice of Appeal relates to (i) claims against Defendant Karen G. Fenkell, (ii) claims regarding Defendant David B. Fenkell's receipt of Trachte phantom stock plan proceeds; (iii) the Settlements and related Settlement Agreement entered into by David B. Fenkell and Karen G. Fenkell (the "Fenkell's") with the Plaintiffs, Trachte and the Trachte ESOP; (iv) the Settlements and related Settlement Agreement entered into by the Plaintiffs with the Trachte ESOP Trustees (James Matrangelo, Jeffrey Seefeldt and Pam Klute) and Stephen Pagelow except with respect to those provisions related to the assignment of certain claims by the Trachte ESOP Trustees to the Plaintiffs that were extinguished by virtue of the Trachte Settlement; (v) the Settlements and related Settlement Agreements entered into by the Plaintiffs with the "Alpha defendants" (Alpha Investment Consulting Group, LLC and John Michael Maier); (vi) payment of incentive awards

to the class representatives, (vii) the Plan of Allocation approved by this Court, or (viii) attorneys' fees and expenses to be paid out of any settlement funds referenced in the Opinion and Order on the 4th day of September, 2014, and entered in this action on the 5th day of September 2014, Document 985;

(6) an Opinion and Order signed by District Judge William M. Conley on the 15th day of October 2013, and entered in this action on the 16th day of October 2013, Document 824, among other things, denying Defendant Karen G. Fenkell's Motion to Dismiss and amending Document 790 to provide a ruling on remedies; provided, however, that nothing in this Amended Notice of Appeal relates to (i) claims against Defendant Karen G. Fenkell, (ii) claims regarding Defendant David B. Fenkell's receipt of Trachte phantom stock plan proceeds; (iii) the Settlements and related Settlement Agreement entered into by David B. Fenkell and Karen G. Fenkell (the "Fenkell's") with the Plaintiffs, Trachte and the Trachte ESOP; (iv) the Settlements and related Settlement Agreement entered into by the Plaintiffs and the Trachte ESOP Trustees (James Matrangelo, Jeffrey Seefeldt and Pam Klute) and Stephen Pagelow except with respect to those provisions related to the assignment of certain claims by the Trachte ESOP Trustees to the Plaintiffs that were extinguished by virtue of the Trachte Settlement; (v) the Settlements and related Settlement Agreements entered into by the Plaintiffs with the "Alpha defendants" (Alpha Investment Consulting Group, LLC and John Michael Maier); (vi) payment of incentive awards to the class representatives, (vii) the Plan of Allocation approved by this Court, or (viii) attorneys' fees and expenses to be paid out of any settlement funds referenced in the Opinion and Order on the 4th day of September, 2014, and entered in this action on the 5th day of September 2014, Document 985;

(7) an Opinion and Order signed by District Judge William M. Conley on the 18th day of February 2014, and entered in this action on the 19th day of February 2014, Document 889, among other things, granting Plaintiffs' Motion for Preliminary Approval of Settlement Agreement; provided, however, that nothing in this Amended Notice of Appeal relates to (i) claims against Defendant Karen G. Fenkell, (ii) claims regarding Defendant David B. Fenkell's receipt of Trachte phantom stock plan proceeds; (iii) the Settlements and related Settlement Agreement entered into by David B. Fenkell and Karen G. Fenkell (the "Fenkell's") with the Plaintiffs, Trachte and the Trachte ESOP; (iv) the Settlements and related Settlement Agreement entered into by the Plaintiffs with the Trachte ESOP Trustees (James Matrangelo, Jeffrey Seefeldt and Pam Klute) and Stephen Pagelow except with respect to those provisions related to the assignment of certain claims by the Trachte ESOP Trustees to the Plaintiffs that were extinguished by virtue of the Trachte Settlement; (v) the Settlements and related Settlement Agreements entered into by the Plaintiffs with the "Alpha defendants" (Alpha Investment Consulting Group, LLC and John Michael Maier); (vi) payment of incentive awards to the class representatives, (vii) the Plan of Allocation approved by this Court, or (viii) attorneys' fees and expenses to be paid out of any settlement funds referenced in the Opinion and Order on the 4th day of September, 2014, and entered in this action on the 5th day of September 2014, Document 985;

(8) an Opinion and Order signed by District Judge William M. Conley on the 9th day of April 2014, and entered in this action on the 9th day of April 2014, Document 913, among other things, granting Plaintiffs' Motion for Preliminary Approval of Settlement Agreement; provided, however, that nothing in this Amended Notice of Appeal relates to (i) claims against Defendant Karen G. Fenkell, (ii) claims regarding Defendant David B. Fenkell's receipt of

Trachte phantom stock plan proceeds; (iii) the Settlements and related Settlement Agreement entered into by David B. Fenkell and Karen G. Fenkell (the “Fenkell’s”) with the Plaintiffs, Trachte and the Trachte ESOP; (iv) the Settlements and related Settlement Agreement entered into by the Plaintiffs with the Trachte ESOP Trustees (James Matrangelo, Jeffrey Seefeldt and Pam Klute) and Stephen Pagelow except with respect to those provisions related to the assignment of certain claims by the Trachte ESOP Trustees to the Plaintiffs that were extinguished by virtue of the Trachte Settlement; (v) the Settlements and related Settlement Agreements entered into by the Plaintiffs with the “Alpha defendants” (Alpha Investment Consulting Group, LLC and John Michael Maier); (vi) payment of incentive awards to the class representatives, (vii) the Plan of Allocation approved by this Court, or (viii) attorneys’ fees and expenses to be paid out of any settlement funds referenced in the Opinion and Order on the 4th day of September, 2014, and entered in this action on the 5th day of September 2014, Document 985.

The Docketing Statement required pursuant to Circuit Rule 3(c)(1) of the United States Court of Appeals for the Seventh Circuit was filed on October 3, 2014, as an attachment to the original Notice of Appeal and is attached once again to this Amended Notice of Appeal.

Dated: October 31, 2014

Respectfully submitted,

JACKSON LEWIS P.C.

By: /s/ David R. Johanson
David R. Johanson (0176102)
725 South Figueroa Street
25th Floor
Los Angeles, California 90017-5408
Telephone: (213) 689-0404
Facsimile: (213) 689-0430
E-Mail: David.Johanson@jacksonlewis.com

By: /s/ Douglas A. Rubel
Douglas A. Rubel (29824)
1400 Crescent Green, Suite 215
Cary, North Carolina 27518
Telephone: (919) 424-8602
Facsimile: (919) 854-0908
E-Mail: Douglas.Rubel@jacksonlewis.com

*Attorneys for Defendant-Appellant David B.
Fenkell*

CERTIFICATE OF SERVICE

This is to certify that on this 31st day of October, 2014, I caused to be electronically filed the foregoing AMENDED NOTICE OF APPEAL (including the Amended Docketing Statement required pursuant to Circuit Rule 3(c)(1) of the United States Court of Appeals for the Seventh Circuit filed as an attachment to this Amended Notice of Appeal along with a separate Certificate of Service for the Amended Docketing Statement) via the CM/ECF system, which sent electronic notice to all counsel of record.

/s/ David R. Johanson

David R. Johanson